

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

MARK RENFRO and GERALD LUSTIG,
individually and on behalf of all of those
similarly situated,

Plaintiffs,

v.

UNISYS CORPORATION, UNISYS
CORPORATION EMPLOYEE BENEFITS
ADMINISTRATIVE COMMITTEE, UNISYS
CORPORATION SAVINGS PLAN
MANAGER, PENSION INVESTMENT
REVIEW COMMITTEE, FIDELITY
MANAGEMENT TRUST COMPANY,
FIDELITY MANAGEMENT & RESEARCH
COMPANY, and FIDELITY INVESTMENTS
INSTITUTIONAL OPERATIONS
COMPANY, INC.

Defendants.

Case Number: 07-cv-02098-BWK

Judge Bruce W. Kauffman

**FIDELITY DEFENDANTS' RESPONSE TO NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF PLAINTIFFS' OPPOSITION TO FIDELITY
DEFENDANTS' MOTION TO DISMISS AND IN SUPPORT OF PLAINTIFFS'
MOTION FOR RELIEF PURSUANT TO RULE 56(F)**

On July 28, 2008, plaintiffs filed a Notice of Supplemental Authority in Support of Plaintiffs' Opposition to Fidelity Defendants' Motion to Dismiss and in Support of Plaintiffs' Motion for Relief Pursuant to Rule 56(f) [Dkt. # 54] ("Plaintiffs' Notice"), attaching a decision by United States District Court for the Central District of California in the case styled, *Tibble v. Edison Int'l*, No. CV 07-5359 SVW (C.D. Cal. July 16, 2008).

Although *Tibble* involves claims challenging the fees paid in connection with a 401(k)

retirement plan, the district court's decision provides no authority or guidance on the principal issues raised in Fidelity Defendants' Motion to Dismiss Plaintiffs' Amended Complaint for Breach of Fiduciary Duty (the "Fidelity Defendants' Motion") [Dkt. # 13]. As Plaintiffs acknowledge in their Notice, *Tibble* involves claims only against the plan's sponsors and related defendants, not against entities that, like the Fidelity Defendants here, provide services or investment products to a plan. As a result, the *Tibble* court did not consider at any level whether or under what circumstances such service providers may be considered plan fiduciaries—which is the central focus of the Fidelity Defendants' Motion.

Accordingly, the *Tibble* decision has no relevance to the issues to be decided by this Court in resolving the Fidelity Defendants' Motion.

Dated: August 22, 2008

Respectfully submitted,

By: /s/

John S. Summers (PA ID No. 41854)
HANGLEY ARONCHICK SEGAL & PUDLIN
One Logan Square
27th Floor
Philadelphia, PA 19103-6933
Telephone: (215) 568-6200
Fax: (215) 568-0300

*Counsel for Defendants Fidelity Management
Trust Company, Fidelity Management &
Research Company, and Fidelity Investments
Institutional Operations Company, Inc.*

Of Counsel:

Robert N. Eccles
Brian D. Boyle
Shannon M. Barrett
Arthur W.S. Duff
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
Telephone: (202) 383-5300
Fax: (202) 383-5414

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

Jerome J. Schlichter
Elizabeth J. Hubertz
Troy A. Doles
Schlichter, Bogard & Denton
100 South 4th Street, Suite 900
St. Louis, MO 63102

Counsel for Plaintiffs

Theodore H. Jobes
Fox Rothschild LLP
2000 Market Street, Tenth Floor
Philadelphia, PA 19103

Counsel for Plaintiffs

Joseph J. Costello
Brian T. Ortelere
Jamie Kohen
Morgan, Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19101-2921

Counsel for the Unisys Defendants

Stephen Harburg
Shannon Barrett
Stephen Brody
O'Melveny & Meyers LLP
1625 Eye Street, NW
Washington, DC 20006

*Counsel for Defendants Fidelity Management
Trust Company, Fidelity Management &
Research Company, and Fidelity Investments
Institutional Operations Company, Inc.*

/s/

John S. Summers